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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,035	09/29/2003	William H. Winters	NOVU004A	4497
21322	7590	12/29/2004	EXAMINER	
MARK A OATHOUT			LEE, JONG SUK	
3701 KIRBY DRIVE, SUITE 960			ART UNIT	PAPER NUMBER
HOUSTON, TX 77098			3673	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/674,035	WINTERS ET AL.
	Examiner Jong-Suk (James) Lee	Art Unit 3673 <i>NW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10, 14, 15, 17 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 10, 13, 15 and 17 is/are allowed.
- 6) Claim(s) 1-9 and 20-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
- Certified copies of the priority documents have been received.
 - Certified copies of the priority documents have been received in Application No. _____.
 - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

1. The amendment filed November 1, 2004 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1: The phrase "such as" in line 2 renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

Claims 2-7 are also considered to be indefinite because they are dependent upon claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103[©] and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 6-8, 20, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris (US 267,523) in view of Crawford (US 5,265,561).

Harris discloses a flood fence (A) to protect the erosion of land including a uncontained pile of wood fragments/brushes (C) placed behind the fence and between the braces (A,A') which may be on the beach to protect the land or country from flood as depicted in Figs. 1-2 (see page 1, lines 10-97).

However, Harris fails to specifically disclose the sizes of the pieces of wool/brushes fragments. Crawford discloses a process for bedding material comprising of: a pile/base product including a plurality of natural wood pieces/fragments/chips and cardboard box pieces, which are inherent tree stumps, having a target size within the range of larger than 1.5 inches or smaller than 3/8 inches (see col.2, lines 35-42; col.4, lines 9-32), the pile having a windrow shape. Further, White discloses an inherent method comprising the steps of: accumulating a starter material from at least one natural wood material/tree stumps; processing, with a conventional wood chipper (20), the starter material into a plurality of pieces/fragments within the targeted size; installing the base product along and on top of the ground with the bags filled with the base product by arranging them as a windrow (see Fig. 1; col.2, lines 29-68; col.3, lines 1-68; col.4, lines 1-47).

Therefore, in view of Crawford, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to produce the wood fragments with certain sizes in order to provide the desired dimensions for the piling.

6. Claims 3-5 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris as modified by Crawford, as applied to claim1 and 20, respectively, further in view of Japanese Patent Application (JP 60-98017). The teachings of Harris modified by Crawford have been discussed above.

However, The teachings of Harris modified by Crawford fails to disclose or fairly suggest the pile/base product having a compost material and the method step of composting the base product. Japanese Patent Application discloses an artificial vegetation partitions on the slope for protecting the soil erosion comprising of: a soil in the partitions mixed with organic substances, such as bark compost, peat moss (see Figs.1-6; English-translated abstract and constitutions).

Therefore, in view of Japanese Patent Application, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to add the compost material to the base product/pile of Harris modified by Crawford in order to enhance the vegetation for the base product when the optimal environment for the seeding is met.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harris as modified by Crawford, as applied to claim 1, and further in view of Parker (US 5,795,099). The teachings of Harris modified by Crawford have been discussed above.

However, the teachings of Harris modified by Crawford fails to specifically disclose the fence having a geo-textile material. Parker discloses an apparatus for controlling beach erosion comprising of a fence with geotextile mesh material (20) attaching to the fence frame (13) (see Figs. 1-4; col.3, lines 30-68; col.4, lines 1-58).

Therefore, in view of Parker, it would have been obvious to one of the ordinary skill in the art at the time the invention was made to further modify the fence of Harris, as modified by Crawford, by including the geotextile material to the fence frame in order to enhance the screening effect for the wave or wind including the sand or sediments.

Response to Arguments

8. Applicant's arguments with respect to claims 1 and 20 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

9. Claims 10, 14, 15 and 17 would be allowable over the prior art of record.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE** MONTHS from the mailing date of this action. In the event a first reply is filed within **TWO**

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jong-Suk (James) Lee whose telephone number is (703) 308-6777. The examiner can normally be reached on 6:30 am to 3:00 pm, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Lee /jl
December 27, 2004



Jong-Suk (James) Lee
Primary Examiner
Art Unit 3673